

8000023 H.M. v. American Express Issued: 1/18/02

H. M. asks the Appeals Board of the Utah Labor Commission to review the order of the ALJ dismissing Mr. M.'s complaint of unlawful employment discrimination against American Express under the Utah Antidiscrimination Act, Title 34A, Chapter 5, Utah Code Annotated.

The Appeals Board's jurisdiction in this matter is governed by §63-46b-12 of the Utah Administrative Procedures Act and §34A-5-107(11) of the Utah Antidiscrimination Act.

BACKGROUND AND ISSUES PRESENTED

This proceeding began when Mr. M. filed with the Utah Antidiscrimination and Labor Division ("UALD") a charge of unlawful employment discrimination against American Express. On May 22, 2001, UALD determined that no reasonable cause existed to conclude American Express had engaged in unlawful employment discrimination against Mr. M.. As permitted by the Utah Antidiscrimination Act, Mr. M. appealed UALD's determination to the Labor Commission's Adjudication Division. Mr. M. then withdrew his appeal. Accordingly, on August 20, 2001, the ALJ presiding over this matter issued an order of dismissal. That same day, a copy of the order of dismissal was mailed to Mr. M. at his correct mailing address.

The record indicates that on September 14, 2001, Mr. M. prepared and signed a motion for review of the ALJ's order and mailed a copy of the motion for review to counsel for American Express. However, Mr. M. did not file the motion for review with the Labor Commission. Consequently, the Commission was unaware of Mr. M.'s motion for review until October 9, 2001, when the Commission received a response to the motion for review from American Express. This led to further inquiry and on October 17, 2001, counsel for American Express provided the Commission with a copy of Mr. M.'s motion for review.

Mr. M.'s motion for review does not challenge the propriety of the ALJ's order of dismissal, but instead raises various objections to UALD's investigation of Mr. M.'s initial complaint against American Express. Before the Appeals Board can consider any of the issues raised by Mr. M., the Appeals Board must first determine whether Mr. M.'s motion for review was filed within the 30 day time limit imposed by the Utah Administrative Procedures Act ("UAPA"; Title 63, Chapter 46b, Utah Code Ann.).

DISCUSSION AND CONCLUSIONS OF LAW

Section 63-46b-12 of UAPA allows a party dissatisfied with an ALJ's decision 30 days in which to file a motion for review with the Labor Commission. A motion for review is not "filed" until it is actually received by the Labor Commission. Maverik Country Stores, Inc. v. Industrial Commission, 860 P.2d 944 (Utah Ct. App. 1993). Section 34A-5-107(11)(b) of the Utah Antidiscrimination Act provides that "(i)f there is no timely request for review, the order issued by the presiding officer becomes the final order of the commission."

In this case, the ALJ issued his order of dismissal on August 20, 2001. Mr. M. never filed his motion for review with the Commission. The Commission and Appeals Board did not have any notice of the motion for review until October 17, 2001, when American Express provided a copy. Consequently, Mr. M.'s motion for review is not timely and the Appeals Board lacks jurisdiction to consider this matter further.

ORDER

The Appeals Board dismisses Mr. M.'s motion for review for lack of jurisdiction. The ALJ's order of dismissal remains in effect. It is so ordered.

Dated this 18th day of January, 2002.

Colleen S. Colton, Chair

L. Zane Gill

Patricia S. Drawe